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WT Docket No. 96-148

## COMMENTS OF U S WEST, INC.

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## **Summary of Comments**

U S WEST applauds the Commission's proposals to increase the flexibility afforded to broadband PCS licensees so they can, in turn, increase the choices available to the American public. U S WEST demonstrates in these comments that the Commission's proposals would constitute a "win-win" situation for all involved.

First, PCS licensees would have the option of selling their rights to certain spectrum they would not otherwise use and, in the process, obtain new funding to meet their business plans and build-out requirements. Second, firms acquiring this partitioned or disaggregated spectrum would realize new business opportunities that would not otherwise have been available. Third, this Commission would be able to take concrete and meaningful steps in discharging its statutory directives to remove, wherever possible, barriers to entry and increase opportunities for small businesses, including those owned by women and minorities. Finally, the principal beneficiary of the Commission's proposals is the American public, which will realize sooner more competitive choices and innovative services than would be the case under the current restrictive rules.

With one exception, U S WEST also agrees with the specific proposals contained in the Notice. The exception involves the proposed build-out requirements for partitioned and disaggregated licenses. U S WEST is concerned that the specific proposals, if adopted, would have the unintended effect of actually inhibiting the desired objectives of promoting efficient use of spectrum and rapid service deployment to the public. U S

WEST, therefore, proposes an alternative build-out proposal for the Commission's consideration.

At least for partitioning, the original licensee and the proposed transferee should have the flexibility to negotiate how they will share the burden of the original coverage requirement (*e.g.*, the original licensee assumes 80% of the responsibility, the transferee the remaining 20%). For disaggregation and for partitioning where the original licensee commits to meeting its original build-out requirements in full, the transferee should be required to meet only the "substantial service" requirement to obtain its renewal expectancy. Only through the adoption of this standard can the Commission be assured that its rules will not have the effect of inhibiting the efficient use of spectrum by discouraging liberal use of disaggregation and partitioning.

Finally, the Commission should allow licensees to partition their licenses using any geopolitical boundary (not just county lines), and it should favorably (and expeditiously) entertain waivers seeking to use boundaries other than geopolitical boundaries.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Geographic Partitioning and Spectrum	)	WT Docket No. 96-148
Disaggregation by Commercial Mobile	)	
Radio Services Licensees	)	
	)	
Implementation of Section 257 of the	)	
Communications Act — Elimination	)	
of Market Entry Barriers	)	

**U S WEST COMMENTS**

U S WEST, Inc. submits these comments in response to the Notice of Proposed Rulemaking, FCC 96-287 (July 15, 1996)(“Notice”), which proposes to increase the opportunities of broadband PCS licensees through geographic partitioning and spectrum disaggregation. As the Commission itself acknowledges, adoption of the proposals would constitute a “win-win” situation for all involved. PCS licensees would have the option of selling their rights to certain spectrum they would not otherwise use and, in the process, obtain new funding to meet their business plans and build-out requirements. Firms acquiring this partitioned or disaggregated spectrum would realize new business opportunities that would not otherwise have been available.

Similarly, this Commission would be able to take concrete and meaningful steps in discharging its statutory directives to remove, wherever possible, barriers to entry and increase opportunities for small businesses, including those owned by women and minorities. But in the end, the principal beneficiary of the Commission’s proposals is the

American public, which will realize sooner more competitive choices and innovative services than would be the case under the current restrictive rules.

**I. The Public Interest Would Be Served by Expanding Use of Geographic Partitioning and Spectrum Disaggregation**

U S WEST wholeheartedly supports the Commission's proposal to remove current restrictions on broadband PCS licensee use of geographic partitioning and spectrum disaggregation.<sup>1</sup> As demonstrated below, the original reasons for restricting partitioning and disaggregation no longer exist; the public interest would be actively promoted by removal of the restrictions; and the proposals are consistent with action the Commission has taken with spectrum other than PCS.

**A. The Rationales for Restricting Partitioning and Disaggregation No Longer Exist**

1. Geographic Partitioning. Current rules (§ 24.714) prohibit broadband PCS licensees from partitioning their licenses except to rural telephone companies ("rural telcos"). As there are six broadband PCS licensees allowed to serve every area and only one rural telco serving any one area, current rules permit at most only one PCS licensee in any one area to partition its license.

The Commission imposed the prohibition on PCS spectrum geographic partitioning (other than to rural telcos) because of a concern that construction requirements would be circumvented.<sup>2</sup> But as the Commission acknowledges, this concern, even if it were

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<sup>1</sup> U S WEST limits these comments to the four non-entrepreneurial broadband PCS blocks — that is, the A, B, D, and E blocks.

<sup>2</sup> See Notice at 5 ¶ 4 and 17 ¶ 32, and Broadband PCS Order, 9 FCC Rcd 4957, 4990 ¶ 83 (1994).

well grounded,<sup>3</sup> can be addressed by subjecting both the partitioner and the partitionee “to coverage requirements that ensure that both portions of a partitioned licensing area will receive service.” Notice at 17 ¶ 32. However, as discussed in Section II *infra*, U S WEST questions the need to impose new or additional build-out requirements on transferees, and it questions in particular the specific coverage requirements proposed for partitioning and disaggregation.

2. Spectrum Disaggregation. Current rules (§ 24.229(d)) prohibit broadband PCS licensees from disaggregating their spectrum before the year 2000. Even then, PCS licensees may disaggregate a portion of their spectrum only if they have first met their five-year construction requirement.

The Commission imposed the five-year ban on broadband PCS spectrum disaggregation because it was concerned that “there *may* be anticompetitive incentives to disaggregate spectrum. Two or three entities *might* purchase a viable 30 MHz license and disaggregate it to reduce the number of new entrants.” Broadband PCS Order, 9 FCC Rcd at 4985 ¶ 69 (emphasis added). It therefore concluded that a five-year ban was necessary to ensure viable competition to cellular carriers and to allow the broadband PCS market to develop. Ibid.

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<sup>3</sup> As the Commission has further acknowledged, broadband PCS licensees, having paid sizable sums for their licenses, have substantial “incentives to construct facilities to meet the service demands in their licensed areas.” Notice at 16 ¶ 31. *See also* Broadband PCS Order, 9 FCC Rcd at 5018 ¶ 154. Licensees also have the incentive to sell their rights to that portion of their assigned spectrum which they do not intend to use.

U S WEST agrees with the Commission that these concerns are “no longer . . . warranted.” Notice at 18 ¶ 37. First, recent developments have alleviated concerns that disaggregation will undermine competition between PCS and cellular carriers. For example, the largest A and B block winner is an IXC/CATV consortium which has announced plans to compete against both the incumbent LEC and the incumbent cellular carrier. The second and third largest bidders in the A and B block auction were cellular carriers, or consortia of cellular carriers, filling in holes in their CMRS coverage areas. None of these licensees has an incentive to disaggregate their spectrum in a way that makes it more difficult for them to compete effectively in the market — either with each other or against the incumbent carriers.

In addition, substantial advances in digital air interfaces have been made since the Commission imposed its five-year ban on disaggregation. U S WEST’s incumbent LEC (U S WEST Communications), pursuant to an experimental license, is actively evaluating new CDMA technologies. Early indications are that a CDMA-based system can provide better quality and substantially more capacity than a similarly sized analog AMPS-based system.<sup>4</sup> As all PCS systems will be using digital air interfaces and many cellular systems are also converting their analog systems to digital systems,<sup>5</sup> there exists the very real

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<sup>4</sup> The Commission recently removed the restriction limiting use of CMRS spectrum to support fixed services in large part because prior concerns over adequate capacity to support mobile services were no longer valid. See CMRS Flexible Service Offerings, WT Docket 96-6, FCC 96-283, at 11 ¶ 21 (Aug. 1, 1996) (CMRS “carriers are using advanced technology. As Sprint Spectrum and US West point out, development of digital technology has led to increases in potential CMRS spectrum capacity by a factor of ten, and those technologies are likely to improve dramatically in the future.”).

<sup>5</sup> See, e.g., CMRS Spectrum Cap., WT Docket 96-59, FCC 96-278, at 51 n.308 (June 24, 1996).

possibility that, absent the ability to disaggregate, some spectrum will go underutilized (if not actually unused) in many markets.

As there is no longer any real concern that a handful of entities “might purchase a viable 30 MHz license and disaggregate it to reduce the number of new entrants,” the foundation for the five-year ban on disaggregation no longer exists.

**B. The Public Interest Would Be Promoted by Removal of Current Restrictions on Partitioning and Disaggregation**

Not only are the current restrictions on partitioning and disaggregation unnecessary, but the elimination of these restrictions would actively promote the public interest. Indeed, expanding the opportunity for broadband PCS licensees to use partitioning and disaggregation would constitute a “win-win” situation for all involved.

1. Existing Licensees. Current broadband PCS serving areas, especially the A and B block MTA licensees, are large.<sup>6</sup> Given the economics of providing PCS (where per-POP costs decrease as density increases), there will be areas within most serving areas the licensee does not intend to serve. Moreover, as noted above, the use of new efficient digital technologies may result in a licensee not needing its entire band of spectrum to provide its planned services.

Partitioning and disaggregation would “provide a funding source that would enable licensees to build-out their systems and provide the latest in technological enhance-

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<sup>6</sup> Even BTAs can be sizable. For example, the Denver BTA encompasses 31 counties in Colorado. One of these counties, Gunnison, is itself three times larger than the entire state of Rhode Island.

ments to the public.” *Id.* at 13 ¶ 20. *See also id.* at 9 ¶ 11 (“[O]ur proposals, if adopted, will provide a means for increased access to capital that can be used to construct and maintain PCS systems.”); *id.* at 15 ¶ 27.

2. New Licensees. More liberalized partitioning and disaggregation rules will also provide new opportunities for additional firms to participate in the broadband PCS market — today limited to the 2,074 licenses established by the Commission. As the Commission has correctly observed, “partitioning and disaggregation could enable more entities to participate in the provision of broadband PCS, including small businesses and businesses owned by minorities and women” (*Notice* at 11 ¶ 14) because the market would be given the opportunity to create additional (albeit smaller) licenses.

Indeed, partitioned and disaggregated licenses are ideally suited to small businesses. It is doubtful whether the large carriers would have an interest in serving isolated areas like Burlington, Colorado (population 2,941), with the nearest town of substance, Limon, Colorado (population 1,831), located over 70 miles away. On the other hand, small businesses are uniquely situated to serve their smaller communities. Entrepreneurs are similarly uniquely situated to provide “niche” services on, say, two MHz of spectrum. *See, e.g., Notice* at 11 ¶ 15 (“[P]artitioning and disaggregation may facilitate the development of so-called ‘niche’ services which may reflect more efficient use of spectrum and allow market entry by entities that only have the ability to provide service to a limited population.”).

Partitioned and disaggregated licenses are, moreover, within the financial reach of smaller businesses. As the Commission has again observed, “[s]mall businesses face certain barriers to entry into the broadband PCS market,” and “the creation of smaller, less capital-intensive licenses . . . are within the reach of smaller entities.” Notice at 9 ¶ 11 and 13 ¶ 20.

3. The Commission. Section 257 of the Communications Act directs this Commission to eliminate entry barriers to small businesses entering the telecommunications market. Section 309(j) similarly directs this Commission to promote economic opportunity for a wide variety of license applicants, including small businesses and businesses owned by women and minority groups.

The Commission tentatively concludes that its current prohibition on partitioning and disaggregation “may constitute a barrier to market entry for small businesses which lack the resources to participate successfully in auctions for . . . broadband PCS blocks.” Notice at 18 ¶ 37. If this is the case, the Commission’s proposals “will facilitate market entry by parties who may lack the financial resources for participation in PCS auctions, including small businesses.” Id. at 11 ¶ 15. Consequently, removal of the current restrictions would constitute a meaningful and concrete step in discharging the Commission’s responsibilities under Sections 257 and 309(j). *See id.* at 3 ¶ 1. Such action would also discharge the statutory responsibilities specified by Section 161(b), which requires the Commission to “repeal or modify any regulation it determines to be no longer necessary in the public interest.”

4. The Public. In the end, the principal beneficiary of the proposed changes would be the American public. To the extent partitioned or disaggregated licensees provide services in areas which the original licensees would not have served or use spectrum the original licensees did not need, the public will enjoy “increased competition” and accelerated service in “areas that may not otherwise receive broadband PCS or other wireless services in the near term.” Notice at 11 ¶ 15. *See also id.* at 11-12 ¶ 16 (more liberalized rules “would allow spectrum to be used more efficiently, speed service to underserved areas, and increase competition.”); *id.* at 15 ¶ 27; *id.* at 18 ¶ 35.

Commissioner Ness in her separate statement has already summarized the many benefits of the proposals in observing that they “would enable more small businesses to ‘get a piece of the action’ by operating within a limited geographic area or on a slice of spectrum”:

Many smaller players often lack the resources to provide service to areas as large as the Major Trading Areas and Basic Trading Areas that were the geographic building blocks in our auctions. Some of those who successfully bid on MTA and BTA licenses may not need 100 percent of their licensed spectrum blocks to provide their intended services. The changes proposed in this Notice may permit these two situations to be reconciled, thereby enabling more entrepreneurs to participate in providing services and facilitating more and better services to be delivered to rural and other less-populated geographic areas.

**C. Adoption of the Proposals Would be Consistent with Action the Commission Has Taken With Other Spectrum**

The Commission currently permits geographic partitioning for MDS, General Wireless Communication Service and cellular service. *See Notice* at 7 nn. 18-20; Rural Cellular Service, 4 FCC Rcd 2440 (1988). The Commission is also seeking comment on

proposals for partitioning for paging services, 220 MHz service, 900 MHz SMR service, 800 MHz SMR service, and 38 GHz fixed point-to-point microwave service. See Notice at nn. 21-25.

The Commission has also permitted spectrum disaggregation for the low-earth orbiting satellite service, and has proposed disaggregation for a variety of other services, including commercial 220 MHz, LMDS, 38 GHz, 800 MHz SMR, and paging. See No-  
tice at 8 nn. 29-35.

Removal of current restrictions on partitioning and disaggregation by broadband PCS licensees would, therefore, be fully consistent with prior Commission actions in connection with spectrum other than PCS.

## **II. Several Minor Refinements to the Proposed Build-Out Requirements Are Warranted**

U S WEST agrees with the vast majority of the specific proposals contained in the Notice. Among other things, U S WEST agrees that the term of a partitioned/disaggregated license be the remainder of the original licensee's 10-year term (except that, for administrative efficiency, an existing licensee acquiring spectrum within its existing service area be allowed to apply its original license term to the newly acquired spectrum); that the partitioned/disaggregated licensee be afforded the same renewal expectancy as the original licensee; that disaggregation be permitted at any time (without waiting for fulfillment of the five-year build-out requirement); that licensees disaggregate frequencies in accordance with the pairings specified in existing rules; and that combinations of par-

tioning and disaggregation be allowed.<sup>7</sup> See Notice at 12 ¶ 19; 15 ¶ 29; 16 ¶ 30; 18-19 ¶ 38; 20 ¶ 42; 24 ¶ 57; and 25 ¶ 59.

The Commission has also proposed to give prospective partitioned/disaggregated licensees two options in meeting build-out requirements. While U S WEST applauds the Commission's effort to give licensees choices, is it concerned that the specific proposals, if adopted, would have the unintended effect of actually inhibiting the desired objectives of promoting efficient use of spectrum and rapid service deployment to the public. U S WEST, therefore, proposes in subsection C below an alternative build-out proposal for the Commission's consideration.

**A. The Proposed "First Option" Build-Out Requirement Is Not Realistic And Will Likely Discourage Partitioning and Disaggregation**

At the outset, U S WEST questions the need to impose any new build-out requirements on partitioned or disaggregated licensees — assuming the original licensee is willing to meet its full build-out requirements notwithstanding the partition or disaggregation. The Commission has established construction requirements which all broadband PCS licensees must meet. See 47 C.F.R. § 24.203. If the original licensee is willing to meet these requirements (whether or not it partitions or disaggregates its license), there is no need to impose additional build-out requirements on the transferee — whether the transferee is a new entrant or an existing licensee. See Notice at 24 ¶ 56. The transferee,

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<sup>7</sup> However, U S WEST believes it is unnecessary to develop special partitioning/disaggregation rules after the original license has been renewed — and after the licensee has already satisfied all build-out requirements. See Notice at 18 ¶ 35 and 23 ¶ 53. To the extent any issues might exist at that time, they can be addressed during the partitioning/disaggregation licensing process.

having paid to acquire its partitioned/disaggregated license, has ample incentive to build a system to begin generating revenues. The public interest is served so long as the original licensee meets its original build-out requirements for its original service area — and so long as the transferee provides additional service somewhere.

The imposition of additional build-out requirements is not only unnecessary, but could also make partitioning/disaggregation unattractive and, in the process, preclude the introduction of new competitive choices, innovative services or service to areas that otherwise may not receive service. This point is illustrated by the proposed “first option.”

Under the first option being considered for both partitioning and disaggregation, the transferee would be required to satisfy the same construction requirements as the original licensee. For example, a partitionee of a 30 MHz license would be obligated to provide service to at least one-third of the population in its partitioned license area within the first five years of the original license term. See Notice at 17 ¶ 33. Similarly, a firm acquiring a disaggregated license from a 30 MHz licensee would be required to provide service to at least one-third of the population in the MTA within five years of the underlying license term.<sup>8</sup> See id. at 23 ¶ 52.

One problem with this proposal is that A and B block licenses were awarded over a year ago. By the time this Commission completes this rulemaking and thereafter acts on any application for a partitioned/disaggregated license (assuming an application is

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<sup>8</sup> Under this proposal, a firm acquiring a 10 MHz disaggregated license from an A or B block licensee would face more severe build-out requirements than a 10 MHz D or E block licensee — with less time to complete the build-out.

filed immediately following this rulemaking), a prospective transferee may have at most only 3.5 years to meet the one-third population build-out requirement. Indeed, the closer one comes to the five-year build-out date, the less likely firms (especially small business new entrants) will even consider acquiring a partitioned or disaggregated license because of the practical inability to meet the one-third population build-out requirement in such a short period of time.

However, the first, “impose-the-same-construction-requirement” option suffers from an even more fatal flaw. This flaw becomes apparent when considering the Denver BTA and Denver MTA, which are similar to the BTAs and MTAs encompassing much of the western United States. A 30 MHz licensee in the Denver MTA, which encompasses portions of six different states, can meet its build-out requirement — serving one-third of the MTA’s population within five years — by building its system solely within the Denver Metropolitan Statistical Area (“MSA”). The Denver MSA constitutes 41.8% of the population of the Denver MTA (1990 census), but only 2.1% of the Denver MTA’s geography.

Similarly, a 10 MHz licensee in the Denver BTA can meet its build-out requirement — serving one-fourth of the BTA’s population within five years — by building its system solely within the Denver MSA. The Denver MSA constitutes 78.3% of the population of the Denver BTA (1990 census), but only 9.8% of the Denver BTA’s geography.

It is unlikely that a Denver MTA or BTA licensee would consider partitioning its area encompassing the Denver MSA (given the relatively favorable population densities). More likely, such a licensee would be interested in partitioning some of the more rural and isolated areas of its serving area. A transferee acquiring such rural and isolated areas may have to build a system over vast geographic areas to meet the one-third (or one-fourth, for BTAs) population build-out requirement. Firms, especially small businesses, may determine that the economics of PCS do not warrant construction of such an extensive system given the small, thinly spread population of the new service area. Because the original licensee often does not have to serve many rural areas to meet its build-out requirements, and because economics may preclude another license from meeting a one-third (or one-fourth) population build-out in these areas, it is possible (if not likely) that the valuable spectrum may lie fallow. The consequence would be that residents of rural areas may be deprived of a new market entrant and competitive choices.

**B. Under the “Second Option,” the Public Could Have to Wait Five Years to Enjoy the Benefits of Partitioning and Disaggregation**

The Commission also proposes “more modest” build-out requirements under a second option. Notice at 17 ¶ 34. Under this second option, however, partitioning and disaggregation will be permitted only after “the original licensee has met its five-year build-out requirement and certifies that it will meet the ten-year coverage requirements.” Id. at 17 ¶ 34 and 23 ¶ 53.

Many broadband PCS licensees will meet their five-year build-out requirement before the fifth year of their license term, as the Commission notes. See Notice at 11 ¶

14. But, however long it takes a licensee to meet this requirement, there is no reason to make the public wait to enjoy the benefits of partitioning or disaggregation.<sup>9</sup> If a licensee knows that it is not going to provide service in certain areas or use a particular portion of its spectrum band, other new entrants should have the opportunity to use that spectrum as early as possible. If the Commission is willing to accept a certification from the original licensee that it will meet the 10-year coverage requirement (*see id.* at 17 ¶ 34 and 23 ¶¶ 53-54), the Commission should be just as willing to accept a certification from the same licensee that it will meet its five-year construction requirement.

Option two, unlike the first option, proposes to establish different coverage requirements for partitioned and disaggregated licenses. For partitioned licenses, the Commission proposes that transferees, to receive a renewal expectancy, must satisfy only the “substantial service” requirement during the remainder of the license term. *See Notice* at 17 ¶ 34. However, for disaggregated licenses, the Commission instead proposes that the transferee must satisfy the five-year coverage requirement by the end of the original 10-year license term. *See id.* at 23 ¶ 53.

As the Commission itself acknowledges (*see id.* at 25 ¶ 57), this proposed five-year coverage requirement poses practical problems for disaggregations proposed near the end of an original license term. Use of disaggregation will be sharply inhibited, if not eliminated as an option altogether, if a prospective market entrant is told that to renew its

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<sup>9</sup> Likewise, because revenues from partitioning/disaggregation can be used by the original licensee in meeting its five-year build-out requirement (*see Notice* at 9 ¶ 11; 13 ¶ 20; and 15 ¶ 27), the original licensee should not have to wait until the build-out is completed before realizing these revenues.

disaggregated license it must complete a five-year coverage requirement in only two years because only two years remain in the original license term. Because the public interest is not served when spectrum is not used as a result of government regulations, the Commission should adopt for disaggregated licensees the same "substantial service" requirement it proposes be used for partitioned licenses.

### **C. An Alternative Proposal for Consideration**

The Commission has established certain coverage requirements for broadband PCS licensees. The public interest is served whenever those minimum requirements are exceeded — whether that additional coverage is provided by the original licensee or by a transferee (which may be either a new entrant or an existing licensee).

At least for partitioning, the original licensee and the proposed transferee should have the flexibility to negotiate how they will share the burden of the original coverage requirement (*e.g.*, the original licensee assumes 80% of the responsibility, the transferee the remaining 20%). The failure of either party to meet its respective coverage commitment can be addressed during the renewal proceeding involving the licensee not meeting its obligations or commitments.

For disaggregation and for partitioning where the original licensee commits to meeting its original build-out requirements in full, the transferee should be required to meet only the "substantial service" requirement to obtain its renewal expectancy.<sup>10</sup> Only

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<sup>10</sup> The Commission also needs to liberally construe its "substantial service" requirement — especially now the CMRS providers have been permitted to provide any mobile or fixed service. See CMRS Flexible Service Offerings, WT Docket 96-6, FCC 96-283 (Aug. 1, 1996). Obviously, coverage requirements designed for mobile applications (percent of population) will not work with respect to fixed CMRS uses.

through the adoption of this standard can the Commission be assured that its rules will not have the effect of inhibiting the efficient use of spectrum by discouraging liberal use of disaggregation and partitioning.

**III. The Commission Should Permit Partitioned Serving Areas to Use Any Geopolitical Boundary and Should Favorably Entertain Waivers to Use Alternative Boundaries When They Are More Meaningful**

The Commission proposes that the service area of any partitioned license “be required to be along county lines,” but it seeks comment on “whether other geopolitical boundaries may be appropriate.” Notice at 12 ¶ 18. U S WEST submits that parties should be allowed to use any geopolitical boundary for purposes of defining the geographic boundary of a partitioned license — be that area a municipality, a township, a fire or 911 district, or a metropolitan water district.

Counties in the western United States are often large. For example, the Denver BTA includes 31 counties within the State of Colorado. One of these counties, Gunnison, has a population of 10,273 (1990 census) and encompasses 3,257 square miles — an area over three times that of the entire State of Rhode Island (1,045 square miles). In the west, communities of interest are often smaller than counties; because of terrain and distance, many cross county lines. For example, the vast majority of Gunnison County’s residents and almost all of its commercial development is concentrated in very small area encompassing the city of Gunnison, the ski-resort community of Crested Butte, and the adjoining valleys of the Taylor River and Tomichi Creek drainages. Most of Gunnison County — close to 80% — is sparsely populated National Forest Service land and open range

land. Service providers knowledgeable about their service areas should have the flexibility to use any geopolitical boundary in defining the service area of a partitioned license.

The Commission should also favorably entertain waivers of prospective partitioned licensees seeking to use boundaries other than geopolitical boundaries. For example, a telephone company may wish to provide PCS only within its certificated landline service area — boundaries which rarely coincide with geopolitical boundaries. Alternatively, it may wish to use a sliver of spectrum in only a small portion of its service area (*e.g.*, to provide fixed wireless loops to serve certain remotely situated customers).

Similarly, an entrepreneur wanting to bring PCS to the Gunnison area would have little interest in serving the entire county; rather he or she would likely want to serve the pair of mountain valleys in which residential, business, and recreational communities have evolved. Requiring one to use the boundaries of Gunnison County or its two principal municipalities would not suitably describe this pocket — the first being 10 times too large, and the latter being far too small.

The point is that prospective service providers wishing to serve only a portion of one county, or portions of several adjacent counties, should be allowed to do so. Absent such flexibility, partitioning will be curtailed and rural consumers will be left without service that might otherwise be provided. A party seeking a waiver should be required to show only that the boundaries are sufficiently defined such that other parties are able to discern the service boundaries — similar to the approach used historically for cellular and SMR service. Such waiver requests should also be subject to expedited treatment.

#### **IV. Conclusion**

U S WEST agrees with AT&T Wireless that “if an entity has paid fair value for spectrum at auction there should be few if any restrictions on its ability to sell or lease all or part of that spectrum.” Notice at 10 ¶ 12 and n.10. And U S WEST certainly agrees with the observation the Commission made only two weeks ago that “the market is the best predictor of the most desirable division of [CMRS] spectrum.” CMRS Flexible Service Offerings, WT Docket 96-6, FCC 96-283, at 11-12 ¶ 22 (Aug. 1, 1996).

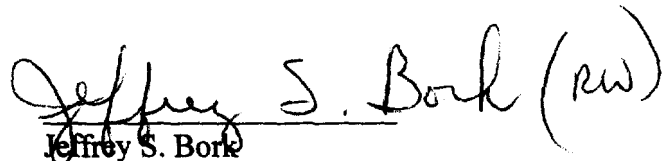
Spectrum use, and partitioning and disaggregation in particular, is a subject where market forces are fully compatible with the public interest. The public interest is best served when the finite resource of radio spectrum is used fully and efficiently, and prospective partitioned/disaggregated licensees have every financial incentive to either use their new spectrum fully (if only to generate revenues to help pay for the cost of spectrum) or dispose of unused spectrum (again to generate additional revenues). Full and efficient use of spectrum is best achieved when businesses, large and small alike, have the opportunity to decide amongst themselves how spectrum can best be utilized.

For the foregoing reasons, the Commission should expeditiously remove current restrictions on partitioning and disaggregation — at least for the four non-entrepreneurial broadband PCS blocks. However, the Commission should reconsider the need to impose any coverage requirements on prospective partitioning/disaggregated licensees. At most,

they should be held to a "substantial service" standard where the original licensee meets (or certifies it will meet) all build-out requirements applicable to its original service area.

Respectfully submitted,

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August 15, 1996

## **CERTIFICATE OF SERVICE**

I, Rebecca Ward, do hereby certify that on this 15th day of August, 1996, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.

  
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